

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH

RHONDA CHASE

SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) and (8d) of the Code of Virginia between the State Water Control Board and Rhonda Chase to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. **ACode@** means the Code of Virginia (1950), as amended.
2. **ABoard@** means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code ' ' 62.1-44.7 and 10.1-1184.
3. **ADEQ@** means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code ' 10.1-1183.
4. **ADirector@** means the Director of the Department of Environmental Quality.
5. **ARegional Office@** means the Tidewater Regional Office of DEQ.
6. **AOrder@** means this document, also known as a consent special order.
7. **ARegulations@** means 9 VAC 25-210-10 *et seq.* - Virginia Water Protection Permit Program Regulation.

SECTION C: Findings of Facts and Conclusions of Law

1. Rhonda Chase and Robert Buckanin own two adjacent lots located at 1101 and 1103 Bay Tree Beach Road in York County, Virginia. The lots are bordered by the Chesapeake Bay and Bay Tree Creek. The property contains palustrine forested wetlands and is surrounded on three sides by tidal marshes.
2. On June 3, 2002, Corrine Yahn from the U.S. Army Corps of Engineers ("ACOE") met with Mr. Robert Buckanin, to delineate wetlands at 1101 and 1103 Bay Tree Beach Road, as requested by the property owners, but after reviewing the property informed Mr. Buckanin that she was unable to proceed due to the size (approximately 5 acres) of the property. Ms. Yahn explained to Mr. Buckanin that wetlands were present on the site and recommended that an agent be obtained to delineate the wetlands. The ACOE mailed a jurisdictional determination letter dated June 3, 2002, to Ms. Chase stating that wetlands were present on the site. On October 23, 2002, Kim Baggett from the ACOE discussed over the telephone requirements for placing a culvert in the ditch to gain access to the property with the owners. She explained the need to delineate the wetlands prior to doing any further work. On October 25, 2002, the ACOE granted coverage under Nationwide 18 for the placement of the culvert. The letter stated that any additional impacts may require a permit and that the letter only authorized the placement of one cubic yard of fill for the culvert. It also recommended that a wetlands delineation be performed prior to commencing any additional work.
3. On February 28, 2003, DEQ and ACOE staff met on-site and determined that approximately two acres of forested land had been cleared. Woody debris was pushed to the northern property perimeter. A subsequent on-site inspection on September 25, 2003 determined that 7,028 square feet (0.16 acres) of palustrine forested wetlands had been impacted on the property adjacent to the north side of 1101 Bay Tree Beach Road. Mr. Buckanin or Ms. Chase do not own this adjacent property. A wetlands delineation of the impacted area was confirmed by Kim Baggett of the ACOE.
4. Notice of Violation No. 03-03-TRO-001 was issued to Ms. Chase on April 4, 2003 for unauthorized alterations of State waters.
5. On August 4, 2003, DEQ received a Joint Permit Application from Ms. Chase for a VWP permit to improve the access road to the Chase property. The application noted that the applicant had already placed fill on 2,500 square feet of tidal wetlands. It requested an after the fact permit for the fill already placed and authorization to place an additional 1,153 square feet of fill. These impacts are separate from the clearing documented on February 28.
6. Sections 62.1-44.5 and 62.1-44.15:15 of the Code and Section 25-210-50.A of the Regulations require the issuance of a Virginia Water Protection ("VWP") permit prior to the fill or discharge of pollutants into State waters.
7. The amount of palustrine forested wetlands cleared was 0.16 acres and the amount of tidal wetlands filled was 0.06 acres. Ms. Chase had not applied for a permit for the 0.22 acres of wetlands impacts at this site at the time the impacts were made and DEQ had not authorized these impacts to the wetlands.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Rhonda Chase, and Rhonda Chase agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Rhonda Chase, and Rhonda Chase voluntarily agrees to pay a civil charge of \$3,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall include Rhonda Chase's social security number and shall note that payment is being made as required by this Order. Payment shall be made by check payable to the "Treasurer of Virginia" delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Rhonda Chase, for good cause shown by Rhonda Chase, or on her own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in any permit issued by the Board.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the site as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this Order, Rhonda Chase does not admit nor deny the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. Rhonda Chase consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Rhonda Chase declares she has received fair and due process under the Administrative Process Act, Code ' ' 2.2-4000 *et seq.*, and the State Water Control Law, and she waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
7. Failure by Rhonda Chase to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate

enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Rhonda Chase shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Rhonda Chase must show that such circumstances resulting in noncompliance were beyond her control and not due to a lack of good faith or diligence on her part. Rhonda Chase shall notify the Director or the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Regional Office within 24 hours of learning of any condition listed above, which Rhonda Chase intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Rhonda Chase. Notwithstanding the foregoing, Rhonda Chase agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Rhonda Chase. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rhonda Chase from her obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

By her signature below, Rhonda Chase voluntarily agrees to the issuance of this Order.

And it is so Ordered this _____ day of _____, 2003.

Francis L. Daniel, Tidewater Regional Director for

Robert G. Burnley, Director
Department of Environmental Quality

Rhonda Chase voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _ day of

_____, 2003, by Rhonda Chase.

Notary Public

My commission expires: _____.

APPENDIX A

RHONDA CHASE

Rhonda Chase shall:

1. Mail all submittals and reports required by this Appendix A to:
Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
2. Upon issuance of a VWP permit, comply with all the provisions of the permit.
3. By December 15, 2003, submit an implementation schedule and restoration plan for the impacted wetlands described in Section C.3. |
4. Implement the plan in accordance with the schedule upon its approval by DEQ.